



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
CARVEL STATE BUILDING
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P.O. Box 8911
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DIVISION OF REVENUE

TECHNICAL INFORMATION MEMORANDUM 92-2

September 21, 1992

SUBJECT: S Corporations

**CONTACT: William M. Remington, Deputy Director
(302) 577-3318**

As a result of the enactment of House Bill No. 573, 68 Del. Laws ch. 423, effective for tax years beginning on or after January 1, 1992, S corporations are no longer subject to the Delaware corporate income tax on the proportion of income allocated and apportioned to Delaware which is attributable to non-resident shareholders.

Instead, the non-resident shareholder of the S corporation will be subject to the Delaware personal income tax with respect to such income. At the same time, the corporation itself is responsible for making estimated payments of personal income tax for the non-resident shareholders based on the non-residents' share of the distributive income of the corporation. The timing of the estimated tax payments follows current corporate income tax, and not personal income tax, law. In other words, for calendar year corporations, 50% of the estimated tax is due on April 1, 20% on June 15, 20% on September 15, and 10% on December 15 of the tax year. The computation of the estimated tax is at a tax rate of 7.7% times estimated distributive income attributable to non-resident shareholders.

For corporate tax years ending on or before March 31, 1993, payments of corporate tentative tax will be treated as payments of estimated tax for non-resident shareholders. Thus, payments of corporate tentative tax already received (including payments received prior to the enactment of House Bill No. 573) will be attributed to estimated personal income tax. For payments of tax subsequent to the enactment of House Bill No. 573, the corporation will multiply estimated distributive income allocated and apportioned to Delaware which, based on percentage ownership of shares, is attributable to shareholders who are non-residents of Delaware times 7.7%. This product equals the estimated tax liability for payments to be made on behalf of the non-residents shareholders. By September 15, for example, the corporation is to have made payments of 90% of this amount. Penalties for late filing or late payment may be assessed against the corporation as if the estimated payments were to be made on behalf of the corporation itself.

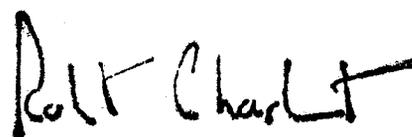
Assuming the estimate of taxable income does not change from previous tentative tax payments, the corporation will have made a deemed overpayment by virtue of having made tentative tax payments based on a tax rate of 8.7%. The foregoing calculation allows the corporation to reduce its September payment, for example, to account for the previous deemed overpayments. Should overpayments result on the final return, there will be no refund to the corporation. Refunds may be claimed only on the personal income tax returns of the non-resident shareholders.

The Division of Revenue will issue returns for the final reporting of distributive income, a "K" type form for attributing distributive income to shareholders, and estimated tax returns for tax years beginning on or after January 1, 1993.

S Corporations should note that, while the determination of Delaware source income under House Bill No. 573 follows the personal income tax criteria, the Division expects under its regulatory authority to provide for allocation and apportionment resulting in Delaware source income very close in practice to the current calculation of Delaware source income for purposes of the corporate income tax.

Net operating loss deductions may be carried forward on the personal tax returns of non-residents commencing in tax year 1992 which losses derive from S corporation losses, including losses incurred in tax periods beginning pre-January 1, 1992. As the starting point in the Delaware income tax computation is federal adjusted gross income, there is no operating loss carryover allowable on the Delaware return that does not derive from a carryover on the federal return for the same year.

Questions concerning taxation of S corporations and their shareholders should be directed to William M. Remington, Deputy Director of Revenue, at (302) 577-3318.

A handwritten signature in black ink that reads "Robert W. Chastant". The signature is written in a cursive style with a long horizontal stroke at the end.

Robert W. Chastant